

BENDAU & BENDAU PLLC
Clifford P. Bendau, II (AZ Bar No. 030204)
Christopher J. Bendau (AZ Bar No. 032981)
P.O. Box 97066
Phoenix, Arizona 85060
Telephone: (480) 382-5176
Fax: (480) 304-3805
Email: cliffordbendau@bendaulaw.com
chris@bendaulaw.com
Attorneys for Plaintiff

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

No.

VERIFIED COMPLAINT

17 Plaintiff, John Coby (“Plaintiff”), sues the Defendants, Vision Solar LLC, Vision
18 Solar Arizona LLC, and Jonathan Seibert and Jane Doe Seibert (collectively,
19 “Defendants” or “Vision Solar”) and alleges as follows:
20

PRELIMINARY STATEMENT

22 1. This is an action for unpaid wages, liquidated damages, attorneys' fees,
23 costs, and interest under the Fair Labor Standards Act ("FLSA"), 29 U.S.C. § 201, et
24 seq.; the Arizona Minimum Wage Act ("AMWA"), Arizona Revised Statutes ("A.R.S.");
25 and the Arizona Wage Act ("AWA"), A.R.S. Title 23, Chapter 8.

1 2. The FLSA was enacted “to protect all covered workers from substandard
2 wages and oppressive working hours.” Barrentine v. Ark Best Freight Sys. Inc., 450 U.S.
3 728, 739 (1981). Under the FLSA, employers must pay all non-exempt employees a
4 minimum wage of pay for all time spent working during their regular 40-hour
5 workweeks. See 29 U.S.C. § 206(a). Under the FLSA, employers must pay all non-
6 exempt employees one and one-half their regular rate of pay for all hours worked in
7 excess of 40 hours in a workweek. See 29 U.S.C. § 207.
8

9 3. The AMWA, A.R.S § 23-363, et seq., establishes a minimum wage within
10 the State of Arizona.
11

12 4. The AWA, A.R.S § 23-350, et seq., establishes the law regarding the
13 payment of wages within the State of Arizona.

JURISDICTION AND VENUE

16 5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1331 and
17 29 U.S.C. § 201, *et seq.* because this civil action arises under the Constitution and law of
18 the United States. This Court also has subject matter jurisdiction pursuant 28 U.S.C. §
19 1337 because the state law claims asserted herein are so related to claims in this action
20 over which this Court has subject matter jurisdiction that they form part of the same case
21 or controversy under Article III of the United States Constitution.
22

23 6. Venue is proper in this district pursuant to 28 U.S.C. § 1331(b)(ii) because
24 acts giving rise to the claims of Plaintiff occurred within the District of Arizona, and
25 Defendants regularly conduct business in and have engaged in the wrongful conduct
26 alleged herein – and, thus, are subject to personal jurisdiction in – this judicial district.
27

PARTIES

1 7. At all material times, Plaintiff is an individual residing in Maricopa County,
2 Arizona, and is a former employee of Defendants.

3 8. At all material times, Defendant Vision Solar LLC was a limited liability
4 company duly licensed to transact business in the State of Arizona. At all material times,
5 Defendant Vision Solar LLC does business, has offices, and/or maintains agents for the
6 transaction of its customary business in Maricopa County, Arizona.

7 9. Defendant Vision Solar LLC is an Arizona limited liability, authorized to
8 do business in the State of Arizona and is at all relevant times Plaintiff's employer as
9 defined by 29 U.S.C. § 203(d).

10 10. Under the FLSA, Defendant Vision Solar LLC is an employer. The FLSA
11 defines "employer" as any person who acts directly or indirectly in the interest of an
12 employer in relation to an employee. At all relevant times, Defendant Vision Solar LLC
13 had the authority to hire and fire employees, supervised and controlled work schedules or
14 the conditions of employment, determined the rate and method of payment, and
15 maintained employment records in connection with Plaintiff's employment with
16 Defendants. As a person who acted in the interest of Defendants in relation to the
17 company's employees, Defendant Vision Solar LLC is subject to liability under the
18 FLSA.

19 11. At all material times, Defendant Vision Solar Arizona LLC was a limited
20 liability company duly licensed to transact business in the State of Arizona. At all
21 material times, Defendant Vision Solar Arizona LLC does business, has offices, and/or

1 maintains agents for the transaction of its customary business in Maricopa County,
2 Arizona.

3 12. Defendant Vision Solar LLC Arizona is an Arizona limited liability,
4 authorized to do business in the State of Arizona and is at all relevant times Plaintiff's
5 employer as defined by 29 U.S.C. § 203(d).
6

7 13. Under the FLSA, Defendant Vision Solar Arizona LLC is an employer.
8 The FLSA defines "employer" as any person who acts directly or indirectly in the interest
9 of an employer in relation to an employee. At all relevant times, Defendant Vision Solar
10 Arizona LLC had the authority to hire and fire employees, supervised and controlled
11 work schedules or the conditions of employment, determined the rate and method of
12 payment, and maintained employment records in connection with Plaintiff's employment
13 with Defendants. As a person who acted in the interest of Defendants in relation to the
14 company's employees, Defendant Vision Solar Arizona LLC is subject to liability under
15
16 the FLSA.
17

18 14. Defendants Jonathan Seibert and Jane Doe Seibert are, upon information
19 and belief, husband and wife. They have caused events to take place giving rise to the
20 claims in this Complaint as to which their marital community is fully liable. Jonathan
21 Seibert and Jane Doe Seibert are owners of Vision Solar and were at all relevant times
22 Plaintiff's employer as defined by the FLSA, 29 U.S.C. § 203(d).
23

24 15. Under the FLSA, Defendants Jonathan Seibert and Jane Doe Seibert are
25 employers. The FLSA defines "employer" as any individual who acts directly or
26 indirectly in the interest of an employer in relation to an employee. Jonathan Seibert and
27

1 Jane Doe Seibert are owners of Vision Solar. At all relevant times, they had the authority
2 to hire and fire employees, supervised and controlled work schedules or the conditions of
3 employment, determined the rate and method of payment, and maintained employment
4 records in connection with Plaintiff's employment with Defendants. As persons who
5 acted in the interest of Defendants in relation to the company's employees, Jonathan
6 Seibert and Jane Doe Seibert are subject to individual liability under the FLSA.
7

8 16. Plaintiff is further informed, believes, and therefore alleges that each of the
9 Defendants herein gave consent to, ratified, and authorized the acts of all other
10 Defendants, as alleged herein.

12 17. Defendants, and each of them, are sued in both their individual and
13 corporate capacities.

14 18. Defendants are jointly and severally liable for the injuries and damages
15 sustained by Plaintiff.
16

17 19. At all relevant times, Plaintiff was an "employee" of Defendants as defined
18 by the FLSA, 29 U.S.C. § 201, *et seq.*

19 20. The provisions set forth in the FLSA, 29 U.S.C. § 201, *et seq.*, apply to
20 Defendants.
21

22 21. At all relevant times, Defendants were and continue to be "employers" as
23 defined by the FLSA, 29 U.S.C. § 201, *et seq.*

24 22. The provisions set forth in the A.R.S. Title 23, Articles 7 and 8 apply to
25 Defendants.
26

27

BENDAU & BENDAU PLLC
P.O. Box 97066
Phoenix, AZ 85066

1 23. At all relevant times, Plaintiff was an “employee” of Defendants as defined
2 by the Arizona A.R.S. § 23-350, et seq.

3 24. At all relevant times, Defendants were and continue to be “employers” as
4 defined by A.R.S. § 23-350.

6 25. At all relevant times, Plaintiff was an “employee” of Defendants as defined
7 by A.R.S. § 23-362.

8 26. At all relevant times, Defendants were and continue to be “employers” as
9 defined by A.R.S. § 23-362.

11 27. Defendants individually and/or through an enterprise or agent, directed and
12 exercised control over Plaintiff's work and wages at all relevant times.

13 28. Plaintiff, in his work for Defendants, was employed by an enterprise
14 engaged in commerce that had annual gross sales of at least \$500,000.

16 29. At all relevant times, Plaintiff, in his work for Defendants, was engaged in
17 commerce or the production of goods for commerce.

18 30. At all relevant times, Plaintiff, in his work for Defendants, was engaged in
19 interstate commerce.

NATURE OF THE CLAIM

24 32. Defendants own and/or operate as Defendant Vision Solar, an enterprise
25 located in Maricopa County, Arizona.

1 33. Defendants do business as “Vision Solar,” a solar power company doing
2 business in Phoenix, Arizona.

3 34. Plaintiff was hired by Defendants on or around February 2020 and worked
4 for Defendants until approximately August 2020.
5

6 35. At all relevant times, Plaintiff worked for Defendants as a canvas manager.
7

8 36. Defendants, in their sole discretion, agreed to pay Plaintiff approximately
\$42,000 per year.
9

10 37. During the time that Plaintiff worked for Defendants, Plaintiff worked
approximately 40 to 50 hours per week.
11

12 38. Defendants did not pay Plaintiff his paycheck for his final two weeks of
work for Defendants.
13

14 39. As a result, Defendants did not pay Plaintiff for approximately 50 hours of
work over the course of two workweeks.
15

16 40. As a result, Defendants failed to compensate Plaintiff any wage whatsoever
for Plaintiff’s final two weeks of work.
17

18 41. In or around March 2020, Plaintiff left his job with Defendants because he
went on active-duty order for covid relief with the United States National Guard.
19

20 42. While on covid relief with the United States National Guard, Plaintiff
began working for Defendants again on a part-time basis. As part of this arrangement,
21 Defendants agreed that they would still pay Plaintiff his full salary while working part-
time.
22

23 43. Defendants final two workweeks took place in approximately August 2020.
24

1 44. Defendants did not pay Plaintiff any wage whatsoever for his final two
2 workweeks.

3 45. To date, Defendants have still paid no wages whatsoever to Plaintiff for
4 such hours worked.

5 46. As a result of Defendants' having improperly failed to compensate Plaintiff
6 any wage whatsoever for Plaintiff's final two weeks of work, Defendants failed to pay
7 the applicable minimum wage to Plaintiff.

8 47. As a result of Defendants' willful failure to compensate Plaintiff any wage
9 whatsoever for such hours worked, Defendants violated 29 U.S.C. § 206(a).

10 48. As a result of Defendants' willful failure to compensate Plaintiff any wage
11 whatsoever for such hours worked, Defendants violated the AMWA, A.R.S. § 23-363.

12 49. Plaintiff was a non-exempt employee.

13 50. Plaintiff is a covered employee within the meaning of the FLSA.

14 51. Plaintiff is a covered employee within the meaning of the AMWA.

15 52. Defendants refused and/or failed to properly disclose to or apprise Plaintiff
16 of his rights under the FLSA.

17 53. Defendants individually and/or through an enterprise or agent, directed and
18 exercised control over Plaintiff's work and wages at all relevant times.

19 54. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
20 from Defendants compensation for unpaid minimum wages, an additional amount equal
21 amount as liquidated damages, interest, and reasonable attorney's fees and costs of this
22 action under 29 U.S.C. § 216(b).

1 55. Due to Defendants' illegal wage practices, Plaintiff is entitled to recover
2 from Defendants compensation for unpaid wages, an additional amount equal to twice the
3 unpaid minimum wages as liquidated damages, interest, and reasonable attorney's fees
4 and costs of this action under A.R.S § 23-363.

COUNT ONE: FAIR LABOR STANDARDS ACT
FAILURE TO PAY MINIMUM WAGE

8 56. Plaintiff realleges and incorporates by reference all allegations in all
9 preceding paragraphs.

10 57. As a result of not paying Plaintiff any wage whatsoever for the final two
11 workweeks of his employment, Defendants failed or refused to pay Plaintiff the FLSA-
12 mandated minimum wage.

14 58. Defendants' practice of failing or refusing to pay Plaintiff at the required
15 minimum wage rate violated the FLSA, 29 U.S.C. § 206(a).

16 59. Plaintiff is therefore entitled to compensation for the full applicable
17 minimum wage at an hourly rate, to be proven at trial, plus an additional equal amount as
18 liquidated damages, together with interest, reasonable attorney's fees, and costs.
19

20 **WHEREFORE**, Plaintiff, John Coby, respectfully requests that this Court grant
21 the following relief in Plaintiff's favor, and against Defendants:

22 A. For the Court to declare and find that the Defendant violated minimum
23 wage provisions of the FLSA, 29 U.S.C. § 206(a), by failing to pay proper
24 minimum wages;
25

- 1 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
2 determined at trial;
- 3 C. For the Court to award compensatory damages, including liquidated
4 damages pursuant to 29 U.S.C. § 216(b), to be determined at trial;
- 5 D. For the Court to award prejudgment and post-judgment interest;
- 6 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
7 action pursuant to 29 U.S.C. § 216(b) and all other causes of action set
8 forth herein;
- 9 F. Such other relief as this Court shall deem just and proper.

12 **COUNT TWO: ARIZONA MINIMUM WAGE ACT**
13 **FAILURE TO PAY MINIMUM WAGE**

14 60. Plaintiff realleges and incorporates by reference all allegations in all
15 preceding paragraphs.

16 61. As a result of not paying Plaintiff any wage whatsoever for the final pay
17 period of his employment, Defendant failed or refused to pay Plaintiff the Arizona
18 minimum wage.

20 62. Defendant's practice of failing or refusing to pay Plaintiff at the required
21 minimum wage rate violated the AMWA, 23-363.

22 63. Plaintiff is therefore entitled to compensation for the full applicable
23 minimum wage at an hourly rate, to be proven at trial, plus an additional amount equal to
24 twice the underpaid wages as liquidated damages, together with interest, reasonable
25 attorney's fees, and costs.

27

1 **WHEREFORE**, Plaintiff, John Coby, respectfully requests that this Court grant
2 the following relief in Plaintiff's favor, and against Defendants:

- 3 A. For the Court to declare and find that the Defendants violated minimum
4 wage provisions of the AMWA, A.R.S. § 23-363 by failing to pay proper
5 minimum wages;

6 B. For the Court to award Plaintiff's unpaid minimum wage damages, to be
7 determined at trial;

8 C. For the Court to award compensatory damages, including liquidated
9 damages pursuant to A.R.S. § 23-364, to be determined at trial;
10 D. For the Court to award prejudgment and post-judgment interest;
11 E. For the Court to award Plaintiff reasonable attorneys' fees and costs of the
12 action pursuant to A.R.S. § 23-364 and all other causes of action set forth
13 herein;
14 F. Such other relief as this Court shall deem just and proper.
15
16
17

JURY TRIAL DEMAND

19 Plaintiff hereby demands a trial by jury on all issues so triable.

RESPECTFULLY SUBMITTED this 25th Day of March, 2022.

BENDAU & BENDAU PLLC

By: /s/ Clifford P. Bendau, II
Clifford P. Bendau, II
Christopher J. Bendau
Attorneys for Plaintiff

VERIFICATION

2 Plaintiff, John Coby, declares under penalty of perjury that she has read the
3 foregoing Verified Complaint and is familiar with the contents thereof. The matters
4 asserted therein are true and based on her personal knowledge, except as to those matters
5 stated upon information and belief, and, as to those matters, she believes them to be true.
6

John Coby II (Mar 25, 2022 11:31 PDT)

BENDAU & BENDAU PLLC
P.O. Box 97066
Phoenix, AZ 85060